

## **Briefing for the Citizen Participation and Public Petitions Committee on petition [PE2021: Ensure the definition of protected animals in the Animal Health and Welfare \(Scotland\) Act 2006 applies to the sheep on St Kilda](#), lodged by David Peter Buckland and Graham Charlesworth**

This petition concerns the welfare and legal status of feral sheep on St Kilda in relation to Scottish animal welfare and wildlife legislation.

### **Brief overview of issues raised by the petition**

#### **History of the feral sheep on St Kilda**

- This petition concerns a population of feral (i.e. living in a wild state) sheep in the St Kilda archipelago off the west coast of Scotland. St Kilda is comprised of four islands – Soay, Hirta, Boreray, and Dun. Hirta was inhabited until 1930, [when its last remaining residents left the island](#).
- There are three populations of feral sheep on St Kilda. There are two populations of Soay sheep – a breed originating from the island of Soay ([the name 'Soay' is thought to be derived from old Norse for 'sheep island'](#)) – on Hirta and on Soay itself. There is also a population of Boreray sheep on Boreray. [According to the Rare Breeds Survival Trust](#), the Boreray breed “originated in the late 19th century from a cross between the Blackface and a variety of the old Scottish tan-faced group”. The Rare Breeds Survival Trust describe both breeds as “very” or [“exceptionally” hardy](#), “primitive” breeds. There are some small populations of Soay sheep living ferally in other parts of the UK, [such as on Holy Isle, near Arran](#).
- Most of the discussion and available information concerns the Soay sheep population, notably because they have been the subject of a long-running study.
- Research suggests that sheep have been living on Soay [since the Bronze age](#) and the population has been feral for many centuries. [In an account of the 'back-story' of the Soay sheep, Fleming \(2021\)](#) states that “The presence of ‘feral’ sheep at St Kilda was first mentioned in the late fourteenth century”. Sixteenth century accounts describe an “uninhabitable island” with animals “by no means unlike sheep in

shape, but wild and they cannot be caught except by surrounding them”.<sup>1</sup>

- [Fleming \(2021\) explains that when St Kilda was still inhabited](#) in more modern times, the Soay sheep were not actively managed but the local community made annual trips to Soay to harvest wool and hunt sheep for food, for which they paid the laird.
- Fleming also noted that the people of St Kilda on Hirta had other “more modern” breeds of sheep as livestock. These were evacuated along with the residents in 1930, leaving behind the feral breeds.
- After the evacuation of the remaining inhabitants, the landowner had 107 Soay sheep captured and transferred from Soay to Hirta in the mid-1930s, [in an attempt to start a weaving business, which largely did not come to fruition](#). This is the basis for the population of Soay sheep on Hirta today.
- The archipelago was [sold by the existing owner to the Marquess of Bute in 1931](#), who then [bequeathed it to the National Trust for Scotland in 1957](#).
- The archipelago has been [a UNESCO World Heritage Site since 1986](#). Keeping sheep in general (i.e. not mentioning the feral breeds) is mentioned against the selection criteria for world heritage site status, as a facet of the “cultural landscape of St Kilda”. The Soay sheep specifically are mentioned as an example of the archipelago’s conservation value: “The feral Soay sheep are also an interesting rare breed of potential genetic resource significance”.
- The Soay sheep on Hirta have been studied by researchers since the 1950s. [The project in its current form has been running since 1985 by the University of Edinburgh and Imperial College London in collaboration with other universities](#), studying population dynamics, evolution and genetics, ageing, and parasite infection.

## Population dynamics of the Soay sheep

- The [university researchers note that](#) “the Soay sheep population is unusual in that it fluctuates dramatically in size with time”, with populations rising markedly in some years, [followed by a population crash by up to 70%](#). One of the objectives of the research has been to find out why this is.
- This cycle, with high mortality rates in some years, is of concern to the petitioners. The petitioners suggest in [the background information to the petition](#) that this is due to overpopulation, contributing “to a yearly

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<sup>1</sup> Quote from Clutton-Brock *et al.* ‘The Sheep of St Kilda’, in Clutton-Brock and Pemberton eds. (2004), [Soay sheep: dynamics and selection in an island population](#), p. 24

average of 600 sheep dying of starvation each winter”, and that “millennia of domestication have altered their physiology, making them unsuited to life unmanaged”.

- However, in [an article on the issue related to the welfare of the sheep, a spokesperson from the University of Edinburgh told \*The Herald\* in February 2023](#) that:

“In the study area, which covers one third of the island, it is extremely rare for mortality to reach 70% in any year and this level has not been seen for many years.

“In common with most wild species that are not managed, for example the puffins of St Kilda, mortality is highly variable from year to year and falls mainly on juveniles.

“Many Soay sheep on St Kilda live much longer lives than farmed domestic sheep.”

- Both the petitioners and researchers from the Soay Sheep Project have expanded on their views in recent letters to [the journal \*Vet Record\*](#). The petitioners – both vets – explain why they believe that the sheep are “unsuited to life unmanaged”. They point to accounts of an annual harvest of sheep by the St Kildans and suggest that “domestication has left sheep ‘reliant on man’ for population control.” They support their view with the following quote from Clutton-Brock in [Soay sheep: Dynamics and Selection in an Island Population](#) (2004):

“The small size, early weaning ages and age at first breeding of Soay sheep are all typical of animals that have been subjected to artificial selection. In most wild sheep, mothers suckle lambs through the summer and females usually breed for the first time in their second or third year of life. As we have argued, it is likely that the early weaning age of Soays is responsible for the lack of density dependence in fecundity and together with the capacity to become pregnant in their first year, is responsible for their unusually high rate of population growth.” (p.304)

- The researchers, on the other hand, underscore that the sheep had been living unmanaged for thousands of years and that they came to St Kilda “long before the agricultural revolution when modern breeds were developed.” They state that the sheep are “genetically distinct” from more modern sheep breeds. The researchers note:

“Genetically and in appearance, Soay sheep are more similar to wild sheep than they are to any modern breed of domestic sheep [...].

“Consistent with millennia of isolation and adaptation to their local environment, they have many characteristics that are different from domestic sheep, including small size, agility, lack

of flocking, self-shedding fleeces and minimal problems with hooves, teeth and parturition [birthing].

“In these respects, they are not ‘reliant on man’. Whether their fecundity is a legacy of artificial or natural selection is debatable – it is within the range for other similar-sized wild ungulates [a group of mammals with hooves].

“Any report of deaths of large numbers of animals should be taken seriously and considered logically. Large numbers of wild animals die every year in the UK as a result of natural processes including starvation, predation, ageing and infection. Sheep mortality on St Kilda is no different. It is the result of the same processes and shows comparable numbers and patterns to those observed in other wild populations of birds and mammals.”

## Legal status of the sheep

- The petition concerns the legal status of the sheep in relation to Scottish animal welfare and wildlife legislation. The petitioners wish for the legislation and guidance to be clarified, to ensure that the sheep on St Kilda are covered by Scotland’s animal welfare legislation “enabling interventions to reduce the risk of winter starvation and the consequential suffering of the sheep”.
- The main legislation in Scotland governing animal health and welfare in domesticated animals is the [Animal Health and Welfare \(Scotland\) Act 2006](#) (‘the 2006 Act’). The 2006 Act sets out a number of responsibilities to provide for animals’ welfare, which includes certain obligations to prevent harm either by an act or omission and promote welfare through e.g. suitable food and shelter. This applies in relation to the welfare of ‘protected animals’. Section 17 of that act defines ‘protected animals’:

“(1)In this Part, an animal is a “protected animal” if it is—

“(a)of a kind which is commonly domesticated in the British Islands,

“(b)under the control of man on a permanent or temporary basis, or

“(c)not living in a wild state.”

- The obligations towards animals’ welfare differ depending on whether or not someone is “responsible for an animal”. It is an offence for any person to cause a “protected animal” (as defined above) “unnecessary suffering by an act”, but in the case of a person who is “responsible for an animal” it is an offence for that person to cause a “protected animal” “unnecessary suffering by an act *or omission*” (Section 19, emphasis added). In the legislation, a person is “responsible for an animal” if they

are responsible for it on a permanent or temporary basis or in charge of it, and “a person who owns an animal is always to be regarded as being a person who is responsible for it”. In the case of animals for which someone is responsible, there are also obligations to ensure their welfare (e.g. to provide suitable food and environment); it is an offence not to “take such steps as are reasonable in the circumstances to ensure that the needs of an animal for which the person is responsible are met to the extent required by good practice” (Section 24).

- Other legislation, for example the [Wild Mammals \(Protection\) Act 1996](#), protects non-domesticated animals from human actions which cause unnecessary suffering (e.g. mutilation, drowning, asphyxiation), but does not create ‘positive’ obligations to prevent unnecessary suffering or provide for their welfare (e.g. to feed or provide them with a suitable environment).
- What obligations are owed to a certain animal therefore depends on whether or not it is considered a “protected animal”, and whether or not it is considered that a person is “responsible for an animal”.
- While the archipelago is owned by the National Trust for Scotland, the Scottish Government does not consider anyone to be responsible for the sheep themselves, and has stated that it does not consider the sheep population on St Kilda to be covered by the protections of the 2006 Act. In [correspondence with the Citizen Participation and Public Petitions \(CPPP\) Committee](#), the Scottish Government stated that:

“The Scottish Government’s established position for many years has been that, for the purposes of welfare legislation, the St Kilda sheep should be regarded in the same way as an unowned and unmanaged population of wild deer or other wild animals. As such, they would be protected animals during any time that they are brought under the control of man, and are protected at other times by the Wild Mammals (Protection) Act 1996. As with other wild animals, or protected animals for which no-one is responsible, there are no positive obligations on any person to act to prevent unnecessary suffering or to ensure the welfare of the animals.”
- The letter to the CPPP Committee explains the Scottish Government’s position in relation to the definition of ‘protected animal’ set out above:
  - (a) “[the criteria that a protected animal is of a kind which is commonly domesticated in the British Islands] can be considered not to apply as, although sheep as a species are commonly domesticated in the British Islands, the current populations of sheep on St Kilda, due to their unique history of adaption to life without management over many generations, can now be considered as distinct kinds that are not “commonly domesticated” in the British Islands;

- (b) “[the criteria that a protected animal is under the control of man on a permanent or temporary basis] would only apply if and when sheep are gathered up for a particular procedure - otherwise they are not under control as they are free to move anywhere; and
  - (c) “[the criteria that a protected animal is an animal not living in a wild state] does not apply as the sheep are "living in a wild state".
- The Scottish Government further clarified its view in the same letter, that even if the St Kilda sheep were considered “animals of a kind commonly domesticated in the British Islands”, the protection provided for them would be broadly similar to the protections for wild mammals because nobody is responsible for them:

“The Animal Health and Welfare (Scotland) Act 2006 distinguishes between the duties owed to a protected animal by persons generally and the duties owed by persons who are responsible for a protected animal, with the duties of a person responsible for a protected animal being greater. It is an offence for any person to cause a protected animal unnecessary suffering by an act, or to mutilate it, perform a cruel operation on it or administer a poison to it under sections 19(1), 20(1), 21 or 22 of the Animal Health and Welfare (Scotland) Act 2006. Where no-one is responsible for a protected animal however, because the animal is ownerless and no person is in charge of it, there is, as with wild animals, no obligation on any person to take positive acts to prevent unnecessary suffering by such an animal or to ensure its welfare, for example, to intervene to prevent starvation. Our understanding is that the National Trust for Scotland, as the owners of St Kilda, regard the sheep as an unowned and unmanaged population, and are not responsible for the sheep on St. Kilda in terms of the Animal Health and Welfare (Scotland) Act 2006.”
- The National Trust for Scotland, which owns St Kilda, has not actively managed the sheep since it was bequeathed the archipelago. In its [2022-23 St Kilda World Heritage Site Management Plan](#), the Trust stated that:

“Across the archipelago, the sheep will continue to be treated as feral animals with a presumption against intervention, except in exceptional circumstances (e.g. a serious outbreak of disease that threatens the sheep populations). The sheep were confirmed by the Scottish Government as non-native species in 2020. The Trust will continue to comply with Scottish Government legislation relating to St Kilda’s sheep populations.”

- In a 2020 letter ([set out in a 2021 Freedom of Information release](#)) the National Trust for Scotland stated that they are feel confident that their “current approach is consistent with legislation”. They further note that:

“We understand there are moral and ethical issues too, and we consider these in the context of other wild and feral animals such as deer and goats that inhabit Trust properties. Other than for habitat management purposes we adopt a policy of least intervention.”

- The petitioners note that [the Scottish Government’s guidance on the 2006 Act](#), though it does not specifically refer to the sheep on St Kilda, states that feral sheep could be considered protected animals “of a kind commonly domesticated in the British Isles”. The guidance states:

“Animals that are of a kind commonly domesticated in the British Islands include feral domestic animals such cats, sheep, goats and ponies”

- The Scottish Government has stated in correspondence with the CPPP Committee that they consider the sheep on St Kilda to be an exception to the feral animals referred to in the guidance. The Scottish Government states:

“Regarding the question of whether the sheep on St Kilda could be considered as “commonly domesticated” for the purposes of the Animal Health and Welfare (Scotland) Act 2006, this would be consistent with our guidance to the Act which states that protected animals include *“the kinds of animals whose collective behaviour, life cycle, or physiology has been altered as a result of their breeding and living conditions being under human control for multiple generations. Livestock, poultry, horses, cats and dogs are all protected animals whether they are in captivity or living wild as “feral” animals. Thus feral cats, sheep, goats or ponies are “protected animals” for the purpose of the Act. Other animals living in the wild which have not had their behaviour, life cycle or physiology altered by being under human control, such as pheasants or deer, are not classed as protected animals. When man has made an animal dependent on him, then the animal should continue to be protected.”* The guidance goes on to explain that there can be domesticated and non-domesticated “kinds” of animals of the same species.

“However, our view has been that the sheep on St Kilda can be considered an exception to this general guidance, as their ancestors have adapted to live on St Kilda over many generations, so are not dependent on humans in the same way that more recently escaped or released domesticated animals would be. The Soay sheep on Hirta are descended from animals introduced in the 1930s from Soay where the population of sheep is believed to have survived previously for hundreds of

years with minimal human intervention, although originally kept as domesticated animals.” (italics added for clarity)

- The petitioners also suggest in the background to the petition that there has previously been some confusion about the legal status of the sheep. In capturing and releasing the sheep for research purposes, researchers and NatureScot had treated the sheep as livestock, and therefore, releasing the sheep following capture and tagging would not require a licence.
- However, with the Scottish Government clarifying that they consider the sheep to be essentially wild, this changes the requirements around the release of the sheep as part of the research project. It is not permitted to release a species outwith its native range, as per [section 14 of the Wildlife and Countryside Act 1981](#), as amended. To do so, a licence must be obtained from NatureScot, under [Section 16\(4\)\(c\)](#) of the same act.
- [A Freedom of Information release](#) suggests that, following clarification of the legal status of the sheep from the Scottish Government, NatureScot is now requiring a licence to release the sheep following capture and tagging.

**Anna Brand**  
**Senior Researcher**  
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